UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SAN FRANCISCO DIVISION OF JUDGES

E-CENTER

Cases 20–CA–124323
And 20–CA–125698

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 1021, CLC

Carmen Leon, Esq., for the General Counsel.
Dennis R. Murphy, Esq.
(*Murphy Austin Adams Schoenfeld),* for the Respondent.
Robert E. Szykowny, Esq.
(*Weinberg, Roger & Rosenfeld),* for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN J. MCCARRICK, Administrative Law Judge. This case was tried in Sacramento, California, on July 22–24, 2014, upon the Order consolidating, consolidated complaint, and notice of hearing, as amended[1] (complaint), issued on May 30, 2014, by the Regional Director for Region 20. On July 16, 2014, the Regional Director for Region 20 issued an Order withdrawing allegations, severing Case 20–CA–120259, Dismissing Charge in Case 20–CA–120259, and notice of right of review. At the hearing the Charging Party stated it would not appeal the Regional Director's dismissal of the charge in Case 20–CA–120259.

The complaint alleges that E Center, Respondent, violated the Section 8(a)(1) and (5) of the Act by unilaterally altering its past practice by increasing the length of spring break closure for its Head Start facilities from 5 to 10 days, by unilaterally changing bargaining unit employees' health benefits and by refusing and unreasonably delaying in providing information to the Service Employees International Union, Local 1021, CLC (Union) necessary and relevant to the Union's duty as collective-bargaining representative. Respondent filed a timely answer to the complaint stating it had committed no wrongdoing.

[1] At the hearing counsel for the General Counsel made technical amendments to certain numbered paragraphs that were granted.

FINDINGS OF FACT

Upon the entire record herein, including the briefs from counsel for the General Counsel and Respondent, I make the following findings of fact.

I. Jurisdiction

Respondent admitted it is a non-profit California corporation with an office and place of business in Marysville, California, where it engages in providing services under the Federal Head Start and Women, Infants and Children (WIC) programs. During the last 12 months Respondent admitted it has received goods valued in excess of $50,000 directly from points located outside the State of California. It admitted that it is an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. Labor Organization

Respondent has stipulated[2] and I find that Service Employees International Union, Local 1021, CLC is a labor organization within the meaning of Section 2(5) of the Act.

III. The Alleged Unfair Labor Practices

A. The issues to be resolved

This case revolves around the parties' collective-bargaining negotiations for a successor agreement to their July 1, 2009 through June 30, 2012 contract. Negotiations began in June 2012 and ended on about August 28, 2013, when the parties had tentatively agreed to all substantive terms of a new collective-bargaining agreement. While the Union ratified the tentative agreement on September 25, 2013, Respondent's new CEO discovered in early October 2013, that Respondent was operating at a significant deficit and Respondent's board of directors failed to ratify the new agreement. Respondent formally notified the Union of this decision on November 21, 2013. Subsequently, Respondent implemented changes in the length of its spring break in March and April 2014. Respondent also implemented changes in employee health care benefits in April 1, 2014. Meanwhile, on February 28, 2014, the Union made an extensive information request of Respondent that was never fully complied with.

General Counsel contends that the changes Respondent made in employees' terms and conditions of employment were without adequate notice to or bargaining with the Union and that Respondent unreasonably delayed or failed to provide information relevant to the Union's collective-bargaining responsibilities, all in violation of Section 8(a)(5) of the Act.

Respondent on the other hand argues that a fiscal crisis caused Respondent to operate at a significant deficit and that this crisis permitted Respondent to make the changes absent an overall impasse in bargaining under the *Bottom Line Enterprises*, 302 NLRB 373 (1991), and *RBE Electronics*, 320 NLRB 80 (1995), exceptions, specifically where the union engages in tactics

[2] Jt. Exh. 1.

designed to delay bargaining and when economic exigencies compel prompt action. Respondent further contends that the Union waived its right to bargain over the changes by its refusal to bargain and by agreeing to a broad management-rights clause in the expired collective bargaining agreement. As to the Union's information request, Respondent argues that it was privileged in its delay to provide and in its refusal to provide information because the request was unduly burdensome, it was designed to delay bargaining and the Union failed to accommodate Respondent's requests to ameliorate the request.

B. The Facts

1. Respondent's organization

Thomas Wagner was Respondent's CEO until October 14, 2013. He was replaced as CEO by Trunice Anaman-Ikyurav (Ikyurav) on October 1, 2013. Troy Bettcher (Bettcher) was Respondent's human resources director and Jodie Keller (Keller) was Respondent's director of Head Start. Respondent stipulated[3] that Ikyurav and Bettcher are supervisors of Respondent within the meaning of Section 2(11) of the Act and that Keller is an agent of Respondent within the meaning of Section 2(13) of the Act. Respondent denied that Ikyurav and Bettcher are Respondent's agents within the meaning of Section 2(13) of the Act.

The record reveals that Bettcher is Respondent's main contact in dealing with the Union in matters including providing information requested by the Union, attending grievance meetings with the Union and providing Respondent's grievance responses to the Union. He is also responsible for ensuring Respondent's compliance with wage and hour issues and he created and ensures compliance with Respondent's employee handbook. Bettcher also supervises several assistant human resources managers and interacts with Respondent's board of directors, CEO, and various department heads. Ikyurav was Respondent's CEO from October 1, 2013 until June 14, 2014. She was the chief officer of Respondent and ultimately supervised all of its employees. I find both Bettcher and Ikyurav are agents of Respondent within the meaning of the Act.

Respondent's programs are financed by grants from the U.S. Office of Head Start. The funds are given for the period May 1 to April 30. Under the terms of its funding grants, Respondent is prohibited from having a deficit, overspending, or using a current year's budget to pay balances from the prior year. Respondent also can not apply for further funds from Head Start. Moreover, Respondent may not borrow funds from one program to pay for costs of another program. The overall budget for the Migrant Head Start and regional Head Start programs for the 2013–2014 fiscal year was $21 million.

2. Respondent's budget deficit

Respondent's new CEO Ikyurav, hired on October 1, 2013, discovered in early October 2013 that by April 30, 2014, Respondent would be running a $470,000 deficit in its Head Start and administrative budgets. Ikyurav was advised of the situation by Respondent's financial officer. Apparently the deficit was caused by Respondent's budget assumptions that went into its grant proposal to Head Start in January 2013 for the 2013–-2014 grant. The proposal

[3] Ibid.

assumed that Respondent would have a 7-percent rate of employee vacancy, i.e., employee absentee rate, for which Respondent would not have to pay wages. Apparently this vacancy rate did not materialize, resulting in the deficit. Keller, the director of Head Start said this was not an appropriate assumption to make since Head Start requires fully staffed positions at all times. The financial deficit in the regional Head Start program was apparently exacerbated by Respondent's past practice, which violated the terms of the Head Start grants, of having one program borrow funds from another to balance the budgets. Upon learning of Respondent's financial situation the Federal Head Start officials limited Respondent's payments to expenses Respondent could verify. According to Ikyurav's uncontradicted testimony, she spoke with union representatives sometime between October 10 and the end of October 2013 and advised them that Respondent was operating at a $470,000 deficit and wanted to meet. While her October 10, 2013 email[4] to Union Representative Linda Medina did not mention any specific budgetary issues, Ikyurav's October 14, 2013 memo[5] to all employees corroborates her testimony in that she states therein that Respondent had a $417,000 deficit.

3. The bargaining history with the Union

As noted above Respondent is a non-profit corporation that provides services through the federally funded WIC, Migrant Head Start and Head Start programs in the northern California. Respondent has had a collective-bargaining relationship with the Union since 2004, as the collective bargaining representative of:

> All regular employees of E Center's Head Start Programs in the following classifications:
>
> Head Start: Bus Driver, Cook Aide, Cook, ERSEA Specialist, Family Educator, Family Service Worker, Janitor, Lead Transporter, Secretary, Teacher/Family Educator, Teacher, Teacher Aide, Teacher Assistant, Transporter, Transportation Aide.
>
> Early Head Start: Infant Toddler Home Base Aide, Infant Toddler Family Educator.
>
> Migrant Head Start: Associate Family Advocate, Associate Teacher, Bus Driver, Cook, Cook Aide, ERSEA Specialist, Family Advocate/Family Childcare Specialist, Family Advocate, Groundskeeper, Health and Nutrition Specialist, Secretary, Teacher Assistant, Teacher, Transportation Aide.
>
> Shared: Health & Nutrition Specialist, Education/ Special Needs Specialist, Facilities Specialist, Secretary, and Receptionist.

Since July 1, 2009, Respondent has recognized the Union as the exclusive collective-bargaining representative of its employees in the above-described bargaining unit and has entered into a collective-bargaining agreement with the Union effective July 1, 2009 through June 30, 2012.

[4] R. Exh. 1.
[5] R. Exh. 10.

Brian Lee (Lee) was the Union's chief negotiator for the negotiations with Respondent for a new collective-bargaining agreement. Linda Medina (Medina) was a field representative for the Union and dealt with Respondent in negotiations for the new collective-bargaining agreement and over contract enforcement issues. Chris Bolshazy (Bolshazy) was a field representative for the Union.

The parties engaged in collective bargaining for a successor collective-bargaining agreement beginning in June of 2012. The parties engaged in negotiations until about August 28, 2013. At this time the parties had reached tentative agreements on all substantive provisions of the new contract.[6] The parties next submitted the tentative agreement to the union members and Respondent's board of directors for ratification. The Union ratified the agreement on September 25, 2013.

A series of emails[7] between Ikyurav and Medina from October 31 to November 6, 2013, reflect that the Union was seeking to get Respondent to ratify the new collective-bargaining agreement and Ikyurav was seeking continued negotiations. Again Ikyurav's testimony is uncontradicted that in early November 2013, she spoke with Union Representative Lee and advised him of Respondent's budget problems. Her testimony is further supported by Medina's email of November 7, 2013, where she acknowledges "the economic position that E Center is currently in."[8] In a November 21, 2013 letter to Lee, Ikyurav indicated that the board of directors had refused to ratify the proposed collective-bargaining agreement and directed her to go back to the bargaining table due to "new issues concerning our fiscal health, funding and licensing."[9] Ikyurav requested further bargaining as soon as possible.

4. Respondent's requests to bargain about health care issues

Ikyurav testified without contradiction by Lee, Medina, or Bolshazy that she spoke with Medina in October 2013 by phone about ideas to reduce Respondent's deficit including changing health care plans and switching to the Affordable Healthcare Plan (ACA).[10] In testimony[11] Ikyurav said she told Lee in November 2013 Respondent needed solutions including changes to health benefits and an adjustment of wages and that Lee indicated he was interested in meeting but was not waiving his NLRB rights.[12] However, no specific proposals were put forth by Ikyurav concerning health care benefits.

[6] Jt. Exh. 4.
[7] R. Exh. 2.
[8] R. Exh. 3.
[9] R. Exh. 4.
[10] Tr. pp. 353–357.
[11] Ibid. at pp. 358–359.
[12] On January 8, 2013, the Union filed an unfair labor practice charge in Case 20–CA–120259 with Region 20 alleging Respondent had violated the Act by refusing to sign an agreed-upon collective-bargaining agreement. See GC Exh. 1(a). Initially the allegations of the charge were incorporated into the complaint herein alleging that Respondent violated Sec. 8(a)(5) of the Act in refusing to sign an agreed upon collective-bargaining agreement. GC Exh. 1(m), pars. 7(a)-(c) and 12. Those allegations were later dismissed on July 16, 2014, and the charges were dismissed. GC Exh. 1(t). At the hearing the Union represented that it would not appeal the dismissal of the charge.

I found Ikyurav to be an honest and forthright witness. She is no longer employed by Respondent and this enhances her credibility. Her answers were responsive to all questions put to her and her testimony was detailed and uncontradicted. I will credit her testimony.

On December 3, 2013, Respondent's human resources director, Bettcher, emailed[13] Union Chief Negotiator Lee requesting that they schedule a collective-bargaining meeting on December 18, 2013. That same day, Lee replied by email[14] stating that he would not be available that day due to the holidays and further, the Union was still determining how to respond to Respondent's refusal to recommend the tentative agreement to the executive board. In a December 3, 2013 email[15] Lee said he was unavailable for negotiations in December and felt further negotiations were unnecessary but that he would send a formal response detailing the Union's position.

On December 6, 2013, Respondent's attorney, Clark Malak (Malak), emailed[16] Lee and suggested they meet for lunch. Clearly this was not a request for bargaining sessions. On January 9, 2014, Malak emailed[17] Lee and offered to bargain over four items including health care benefits. The email stated in pertinent part:

> E Center's management does not want to renegotiate the entire CBA or reject all of the tentative agreements reached. In fact, had you taken the time to meet with E Centers management, you may well have discovered that not only do the current challenges warrant making some changes but also that the changes proposed are both reasonable and rational in light of the current challenges faced. The management team has identified essentially only four areas where modifications are being proposed to address very specific issues. Those four areas are the following:
>
> . . . .
>
> Terminate current group healthcare plan and offer in its place employer contributions of $500 per month for each employee to go into a qualified account (a Health Savings Account or a Flexible Spending Account). Management would certainly be receptive to suggestions for how best to disburse this monthly amount to employees in ways which maximize its value to the employees of E Center. This is a **critical proposal** because of both pressing timelines and also because of the significant impact it would have on the E Centers budget.
>
> . . . . * *
>
> Obviously, the healthcare piece is a very big issue both in terms of its fiscal impact on the organization as well as its impact on employees. It would certainly be very helpful for the union and management to meet as soon as possible to discuss how this proposal would impact employees and what are the best ways to minimize that impact while allowing E

[13] R. Exh. 5.
[14] Ibid.
[15] R. Exh. 5.
[16] Jt. Exh. 5, p. 2.
[17] Ibid at p. 1.

> Center to achieve much needed cost savings. The other parts of the proposal, I believe, could be achieved with little pain to the employees. In fact, my understanding is that management is proposing to adopt wage increases which are certainly not a part of the tentative agreements previously reached.
>
> As I stated above, I strongly urge you to schedule a negotiation session with management as soon as possible to address these critical issues. Absent a response from you, *management would proceed with putting together final proposals* without the union's input, a course which I, and E Center's management, strongly disfavor. I look forward to your response. Thank you.

5. The Union's response to Respondent's requests to bargain over health care

It appears that from late October 2013 the Union took the position that it did not have to bargain further over terms of a collective-bargaining agreement since the parties had agreed to all of the terms and conditions of a new contract. Union Representative Bolshazy confirmed this position in his testimony that the Union did not bargain over the healthcare issues Respondent raised because they had filed unfair labor practices with the Board over Respondent's refusal to sign the agreed-upon contract and it was their position ". . . that we would not be negotiating the changes because we felt we already had a binding agreement, . . .:[18]

In an email of November 6, 2013,[19] Medina advises Ikyurav that:

> You can review the contract, but cannot make any changes to our contract. . . . The union demands benefits in the contract and the date of Board members have executed as of October 5th or 6th as promised. The union is prepared to file an unfair labor practice if we do not have a fully executed contract by November 12, 2013.

Similarly Boshazy takes the position that Respondent is bound to the terms of the agreed- upon collective-bargaining agreement in an email to Lee of November 7, 2013,[20] commenting on Ikyurav's email disclaiming that the agreedupon terms of the new contract were binding:

> Brian, what is your take on this verbiage from EC? How do you want to respond? Is this something we hand over to Matt? My take is to bad so sad for them. We bargained in good faith for 15 months with their attorney at the table. I feel she is duty bound to take it to the board for ratification.

The Union's position is further confirmed in Lee's email to Bettcher on December 3, 2013, where he states: "As of today, the union does not agree that further negotiations are necessary."

[18] Tr. at p. 226, LL. 17–-25.
[19] R. Exh. 2.
[20] R. Exh. 3.

6. Respondent's post January 2014 bargaining position

It appears that sometime after the Union filed its unfair labor practice charge on January 9, 2014, in Case 20–CA–-120259, alleging Respondent violated Section 8(a)(5) of the Act in refusing to sign an agree- upon collective-bargaining agreement, Respondent took the position that it could not bargain with the Union until the charges were resolved. Respondent also took the position that the management-rights clause of the expired collective- bargaining agreement gave it the right to make changes to terms and conditions of employment. Thus, in a March 4, 2014 email to Respondent's management, union stewards and union representatives, Ikyurav cites the parties' expired 2009–2012 collective-bargaining agreement, and notes it:

> [S]tates that the actions E Center management is taking are clearly within our rights. I have included Article 6, Management Rights from the CBA, and highlighted the areas that the SEIU representatives have erroneously stated that we are violating.

Ikyurav then provides the text of article 6, management rights of the collective-bargaining agreement.[21]

According to Bolshazy's uncontradicted testimony, which is consistent with Ikyurav's meeting notes,[22] at a February 27, 2014 union stewards' meeting at Respondent's Chestnut Street office in Marysville, California, Ikyurav stated that the meeting was not a bargaining session and she could not bargain because of the pending unfair labor practice charges. Medina testified that Ikyurav discussed Respondent's budget, financial situation and healthcare. Ikyurav said new health benefits had already been implemented for nonbargaining unit employees and that she wanted to propose it to bargaining unit employees. Ikyurav said that she wanted to offer those who did not take the Health Savings Account insurance (HSA) the option to take a $500-per month stipend and get health coverage through their spouses or a covered California plan. In the minutes of the February 27, 2014 meeting, Ikyurav related that she had tried to begin making changes to health benefits in January 2014:

> [B]ut the union and E Center did not make it to the table to begin discussion. . . Because of the CBA, changes for the union employees cannot be made due to the lack of negotiations.[23]

Consistent with Respondent's position that it could not bargain with the Union, at this meeting, Ikyurav stated that ". . . because charges were filed against E Center, both parties would have to wait for the outcome of that decision by a party to be made before further discussions could be made."[24]

Respondent continued to maintain this position as late as March 12, 2014. When Medina received the new health benefits package Respondent had issued to employees, in his email[25] to Medina, Bettcher states that,

[21] GC Exh. 11.
[22] GC Exh. 11.
[23] GC Exh. 11, CEO meeting notes at p.1.
[24] R. Exh. 6, p. 3.
[25] Jt. Exh. 13, p. 4.

> Since the current NLRB charge regarding the CBA is still pending, we are not able to meet concerning this issue at this time. This information was sent out to ensure members are able to take advantage of the Covered California option if they choose to do so.

This position was reiterated by Ikyurav on March 12, 2014, in an email from Ikyurav to Bettcher in which Ikyurav stated that Medina should have understood that ". . . there will not be any discussion regarding items that are still part of the CBA related charges because of the NLRB charges that are still pending investigation."[26]

Once again on March 12, 2014, Ikyurav states to all regional Head Start employees that Respondent would not bargain with the Union stating:

> The NLRB charges your representatives filed about the CBA keep us from being able to meet with your representatives until a decision has been made — by NLRB. Linda can't demand to meet with us after she filed her claim — it would jeopardize the investigation, and she knows that. I don't understand why she isn't being honest with everyone that they waived their rights to bargain when they filed the charges. The random emails and harassing phone calls are just a show for staff, she makes them and then tells everyone that we won't meet or talk — despite knowing the truth that we can't meet.[27]

7. The spring break closure change

In the past, Respondent has closed its Head Start facilities during the spring break for 5 days. This practice is reflected in the parties' tentative agreement[28] reached during bargaining on August 28, 2013.

Respondent's Head Start director, Keller testified, without contradiction, that in early February 2014, she submitted a plan to Ikyurav for reducing Respondent's deficit by scheduling every Friday off for 5 weeks or by closing an additional 5 days during the spring break closure. According to Keller, Respondent decided it would add 5 days to the spring break closure. Keller initially said the decision to add the 5 days was made in early February then she backtracked and said it wasn't completely decided and that the decision was made in the latter part of February. The evidence does not support Keller's testimony that the decision to close was made in late February as discussed below. I do not credit Keller's testimony.

On about February 10, 2014, the Union and Respondent met at Respondent's program administration office in Marysville, California, regarding employee layoffs. The Respondent's representatives said that the purpose of the meeting was to reduce Respondent's projected budget deficit to zero as they could not have a deficit at the end of the fiscal year. At the end of this meeting, Respondent gave the union representatives a draft of a memo[29] to all Head Start employees dated February 11, 2014 which states, in part:

[26] Ibid at p. 3.
[27] Jt. Exh. 15.
[28] Jt.Exh. 4, pp. 1 & 14.
[29] Jt. Exh. 7.

> E Center customarily takes 5 days off for Spring Break but the fiscal situation requires that all Head Start sites take 10 days off for Spring Break in 2014 reducing the service days to 128. The extended break has been shared with OHS Region 9, as well as SEIU. The program closure dates are as follows:
>
> Chico sites, (Elm, Rosedale, Chapman, and Mariposa)
> March 10th-March 21st
>
> A11 other Head Start sites
> April 7th-April 18th
>
> Staff members in positions that do not require a substitute and have a PTO balance above 80 hours at the end of Spring Break may be asked to take additional time off. You will be contacted by your supervisor if you will need to take additional time off.

Upon giving this memo to the union representatives, Keller told them that Respondent would need an answer from the Union by February 14, 2014, as to whether they would agree to the 10-day spring break closure rather than the traditional 5 days.

According to Bolshazy this was the first notice the Union was given about an extended spring break closure. Both Bolshazy and Medina said February 14, 2014, was not enough time to get back to their members. The parties then agreed to a telephone call on February 17, 2014, to followup with whether the union representatives had been able to communicate with the members. Keller told Medina that she wanted to send the draft memo out to the employees. Both Bolshazy and Medina said Respondent should not send this letter to bargaining unit employees until they had had a chance to speak with their members. Keller agreed. Keller did not contradict either Bolshazy or Medina about the need to contact union members. I credit both Bolshazy and Medina.

According to Keller she told the union officials at the February 10, 2014 meeting that Respondent, ". . . was projecting that we were going to close 5 additional days at spring break. It was clear that both Linda and Chris were not happy to hear that."[30] While Bolshazy was unhappy he said he understood why it was necessary. Keller asked Boshazy what his request would be if Respondent moved forward with the additional 5-day closure and he responded, "Well I think it makes sense that you would offer the opportunity to the employees to have that choice (to take time off with their PTO balance or apply for unemployment) because you're already taking five days from them."[31] Keller responded, "I completely agreed with his statement and that absolutely if we moved forward that's what I would do." [32] According to Keller this exchange resulted in her understanding that the parties had reached an agreement on the extended spring break. Later on February 10, 2014, Bettcher sent Medina an email[33] summarizing the subjects discussed earlier that day at the meeting. While he listed the spring break closure as a matter discussed, there was nothing stated about an agreement on the closure.

[30] Tr. at p. 287, LL. 3–6.
[31] Ibid at p. 288, LL. 10–12.
[32] Ibid. at p. 288, LL. 14–15.
[33] GC Exh. 8.

In a February 11, 2014, email[34] from Keller to Ikyurav, Keller advises she wants to send out the above-cited February 11, 2014 memo to employees regarding the spring break closure memo shown to Medina and Bolshazy. The text of the email states nothing about an agreement concerning the length of the closure but confirms Medina and Bolshazy's testimony that they were seeking meetings with members to discuss the issue. In her email Keller states:

> Please review the memo regarding the extension of Spring Break. If you are ok with it; I will send it out to the staff. The union is already out telling everyone that they have a union meeting tomorrow tonight . . . . I'd like this to go out tonight or tomorrow early if possible.

Ikyurav approved the memo, with her corrections[35] that same day.

On February 12, 2014, Medina met with approximately 60 union members in Yuba City, California where union members showed Medina Respondent's memo[36] announcing the 10-day spring break closure.

In a February 14, 2014 email[37] Medina told Bettcher that the Union did not agree with Respondent's proposed changes including the 10-day spring break closure and that she would be filing unfair labor practice charges with the NLRB. Later that day Ikyurav replied that, "[i]f the issue becomes that I made unilateral decisions to save E center from, complete closure, I will hold my head high in the process."[38]

I credit Medina and Bolshazy's testimony that no agreement was reached with Keller regarding extending spring break an additional 5 days. Both Medina and Bolshazy testified without contradiction that they needed additional time beyond February 17, 2014, to talk with union members about this issue. Nothing is mentioned about such an agreement in Bettcher's contemporaneous memo or in Keller's email to Ikyurav. Moreover, as soon as Medina became aware of Respondent's decision to close an additional 5 days, she wrote an email in protest.

Respondent subsequently closed different work sites across different regions impacting about 100 employees for 10 days over a designated spring break period which fell on either March 10 through March 21, or April 7 through April 18.[39]

8. The health care changes

The parties stipulated that the 2009–2012 collective-bargaining agreement at article 13 provided health, dental and vision benefits.[40] Article 13 provided that employees could choose

[34] Jt. Exh. 6.
[35] Ibid.
[36] Jt. Exh. 7.
[37] Jt. Exh. 8, p. 3.
[38] Ibid.
[39] Jt. Exh. 7.
[40] Jt. Exh. 1, stipulation 4.

among insurance plans of Blue Shield PPO, Blue Shield HMO, and Blue Shield HSA.5[41] Article 13.3 of the contract provides that Respondent paid 100 percent of the premium for employees and 50 percent for their dependents under the three plans.

At a February 27, 2014 meeting with union stewards to discuss, among things, health insurance , Ikyurav was asked, "If the health stipend is something that needs to be negotiated, how does this affect the union employees? If open enrollment is missed, how does this affect the employee?" She replied, "When employees return, they qualify for open enrollment. Just as Troy Bettcher, HR director had the letters ready for nonunion staff; he has the letters ready for bargaining unit employees to be mailed, once the meeting is held with the Union. The turnaround is tight but it can be done."[42]

According to Bolshazy's uncontradicted testimony, which is consistent with Ikyurav's meeting notes,[43] at the February 27, 2014 union stewards' meeting Ikyurav stated that the meeting was not a bargaining session and she could not bargain because of the pending unfair labor practice charges. Medina testified that Ikyurav discussed Respondent's budget, financial situation, and healthcare. Ikyurav said new health benefits had already been implemented for nonbargaining unit employees and how she wanted to propose it to bargaining unit employees. Ikyurav said that she wanted to offer those who did not take the health savings account insurance (HSA) the option to take a $500-per month stipend and get health coverage through their spouses or a Covered California plan. In the minutes of the February 27, 2014 meeting, Ikyurav related that she had tried to begin making changes to health benefits in January 2014, "but the union and E Center did not make it to the table to begin discussion . . . Because of the CBA, changes for the union employees cannot be made due to the lack of negotiations."[44] In response to Union Representative Medina's question as to the CBA, Anaman-Ikyurav stated that "because charges were filed against E Center, both parties would have to wait for the outcome of that decision by a party to be made before further discussions could be made."[45]

The parties stipulated[46] that in a March 7, 2014 letter[47] to bargaining unit employees Bettcher set forth Respondent's new health care options for bargaining unit employees. In the letter Bettcher describes the new plans:

> E Center is offering the following benefits to all bargaining staff. We are providing this information to ensure that all staff have the opportunity to participate in our health plan . . .
>
> Our health insurance carrier will continue to be Blue Shield. The Active Choice plan is not longer available and has been replaced with a Blue Shield Plan that allows members to open up a tax advantaged "Health Savings Account" (HSA). The second letter states "E Center is offering the following benefits to all bargaining staff. . . The Active Choice

[41] Jt. exh. 3.
[42] GC Exh. 11, p. 2.
[43] Id..
[44] Id., CEO meeting notes at p.1.
[45] Ibid.
[46] Jt. Exh. 1, stipulation 17.
[47] Jt. Exh. 12.

> plan is no longer available and has been replaced with a Blue Shield plan that allows members to open up a tax advantage 'Health Savings Account' (HSA) . . . All current working benefit eligible employees will need to submit either an enrollment form for elections or changes or an Opt-Out Notice form before 03/24/14. . . .

In a second letter[48] of March 7, 2014, Bettcher informs employees:

> Due to the fiscal challenges E Center has faced in the recent past, and in an effort to plan more effectively for the future, E Center has had to restructure our benefit options for benefit eligible, bargaining staff starting with the upcoming program year. Although these changes are a distinct shift from past years coverage options, they are indeed necessary in order to make E Center fiscally strong to move forward.
>
> Also included are the plan descriptions for the benefit packages E Center is now offering. Among the options provided are a HSA and an "Opt-Out" option. In addition, the premium rate for the HSA option is listed to include Dental and Vision. If you choose not to participate in either the HSA plan, you do have the option to opt-out and receive cash-in-lieu in the amount of $500/month (subject to payroll taxes) if you are able to provide a letter showing you have other medical coverage.
>
> There is also information on Covered California, which is an option for those who choose not to participate in E Center's benefit plan options. Open enrollment for Covered California is only available until March 31, 2014.

Respondent's new health care plans for bargaining unit employees no longer included Active Choice which was replaced with an HSA provided by BlueShield. In addition, Respondent no longer provided any premium payments for bargaining unit employee dependents.[49] Employees were informed they must submit an enrollment form, elections for changes, or an opt-out form by March 24. Migrant Head Start employees would have to make their decision when their season started.

On March 11, 2014, Medina sent Ikyurav an email requesting the benefits package that was issued to employees on March 7, 2014.[50] She also provided her availability to meet.[51]

On March 11, 2014, Ikyurav sent employees an email[52] in which she notifies employees that they would be receiving their medical enrollment forms in the mail. In the email, Ikyurav stated that, "The only difference moving forward is E Center will contribute $500 per employee for medical costs—whether it is our current provider Blue Cross, or if an employee decides to find insurance under the Affordable Care Act."[53]

---

[48] R. Exh. 7.
[49] Jt. Exh. 12, p. 2.
[50] Jt. Exh. 13.
[51] Ibid.
[52] Jt. Exh. 14.
[53] Ibid.

On March 12, 2014, Medina received the benefits package Respondent previously issued to employees.[54] In the email to Medina, Bettcher stated that Respondent could not meet with the Union concerning health care because of the pending NLRB unfair labor practice charge. That same day, Medina requested to meet and confer over the package.[55] Later that day, Ikyurav confirmed there would be no negotiations regarding health care because of the pending unfair labor practice charges.[56] Again on March 12, 2014, Medina replied to Bettcher stating that she was "requesting to meet and confer on the current CBA dated July 1, 2009 through June 30, 2012, article 13.1 thru 13.4."[57] Also on March 12, 2014, Union Representative Medina sent Ikyurav an email in which Medina states that she contacted Respondent's benefits person who had no information on the new health care plan and Medina again requested that Respondent meet and confer.[58]

Contrary to its earlier stated position, on March 17, and again on March 18, 2014, Bettcher emailed Medina and proposed dates to meet regarding the health benefits. Medina accepted but she later withdrew her availability.[59]

On March 28, 2014, Respondent proposed to the Union that E Center would sign off on all the tentative agreements, if the Union would be agreeable to accept the changes to the healthcare plan. The Union rejected the proposal and told Respondent to go back and sign the tentative agreements as they were.

On April 1, Respondent provided new benefits to its employees. Bargaining unit employees were given the option of receiving the HSA insurance benefit, or the $500-a-month stipend.

9. The information request

After the February 27, 2014 meeting with union stewards where Respondent's fiscal problems and specific health care plans were discussed, on February 28, 2014, Union Representative Bolshazy sent Bettcher a letter[60] with multiple information requests concerning unit employees as well as requesting financial information concerning Respondent's fiscal health. General Counsel's Exhibit 2, as redacted, reflects those portions of the Union's information request that the General Counsel believes were relevant and necessary to the Union's performance of its function as exclusive collective-bargaining representative.[61] This information was requested to verify Respondent's claims about its poor fiscal situation as well as for information concerning Respondent's health care plans. The relevant information requested included:

[54] Jt. Exh. 13, p. 4.
[55] Ibid at p. 3.
[56] Ibid.
[57] Ibid.
[58] Jt. Exh. 16.
[59] Jt. Exh. 13 and GC Exh. 3.
[60] Jt. Exh. 9.
[61] GCExh. 2 represents an amendment to the complaint, substituting the redacted version of the Union's February 28, 2014 information request.

EMPLOYEE DATA

1. Please provide the names, titles, phone numbers, home address, dates of hire and current hourly salaries of all employees of E-Center head start to include represented,

2. List of any and all newly created positions for represented for the current year and the past four (4) years.

3. List any and all newly created job descriptions for represented for the current year and the past four (4) years and the annual fully loaded cost.

4. Current Organizational Chart for current fiscal year and the past three years. Include classifications and FTE.

FINANCIAL DATA

5. List of any and all who participated in mandatory time off (MTO) (represented

6. Total salary savings for represented employees based participation in MTO.

IV.-EMPLOYMENT AND WAGES

1. Number of unfilled FTE's and the salary savings for current fiscal year. Include the number of vacancies per month for the current fiscal year. Include the salary savings for the previous four (4) fiscal years of any unfilled FTE's.

3. Confirm the total dollar amount for each of the following for represented for the current fiscal year and the past three fiscal years, for extra help, temporary, contracts, merit increases, bonuses, overtime pay.

4. Please also include the current PTO balance and also the balance for the past three years for represented

V. HEALTH INSURANCE

1. Number of employees enrolled in the current health plans for the current fiscal year and previous three (3) fiscal years. Break out information to include, plan, type of coverage, single, couple or family.

2. Out-of-Docket costs for represented employees in the above plans.

4.Savings realized by E-Center from employees who opted-out of insurance.

5. Total cost if E-Center were to pay 100% of employee-only health insurance.

6. Total cost if E-Center were to pay 100% of employee-only dental insurance.

IV. EMPLOYMENT AND WAGES

1. Number of -unfilled FTE's and the salary savings for current fiscal year. Please include a list of all open funded positions and unfunded positions both represented

2. The COLA amount for E-Center employees to include migrant and regional from 2007 to present and please show increase to the salary schedule for each year. Total salary savings from E-Center over the same period of time due to contract negotiations or closures of schools, closures during winter break and spring break.

3. Amount of overtime for represented employees for 2010-11, 2011-12 and 2012-13 and reason for overtime.

VI MISCELLANEOUS

5. On a letter dated November 21, 2013 by the CEO, to former Field Director Brian Lee, she states "... fiscal, licensing and fundraising parameters within which we find ourselves." This statement can be found on paragraph number three, the first sentence. Please provide information regarding what parameters you are referring to and how they apply to SEIU bargaining unit members.

6. On an email dated Friday, February 14, 2014 from the CEO Trunice Anaman--Ikyurab to Linda Medina, states in the first sentence of the first paragraph: "If we don't close as proposed, we will be overspent for the program year and E-Center will have to close its head start program for good because we won't be able to dig out of the whole the program is in."
Please provide information and documentation which supports that E-Center will have to close its head start program for good.

7. On the same email dated Friday, February 14, 2014 the CEO also states 'What I have seen since I joined E-Center is that SEIU 1021 representation is equally responsible for the fiscal mess e center is in as Tom Wagner, Moises de Costa, and Kathy Davison." Please provide documentation and information supporting your allegations that SEIU is equally responsible for any financial deficits that E-Center is or has been currently experiencing.

9. In paragraph you Have identified as paragraph #3, the second sentence the CEO states: The directive to eliminate the deficit by 4/30/14 came directly from Jan Len and Martin Tom, the fiscal and program leads for Region 9, our funding source." Please provide the directives) that this statement is based on.

A week later on March 6, 2014, Ikyurav responded by email[62] to the Union's request for information (RFI) refusing to provide any information, stating:

[62] Jt. Exh. 10.

> We have forwarded your RFl to the NLRB. It has become abundantly clear that you have absolutely no interest in working with us, exploring solutions or protecting the interests of employees in this bargaining unit. Your outrageous RFI Is entirely outside the scope of what we are trying to work on together and is a very transparent effort to both bully and paralyze management from taking the steps necessary to keep this organization viable. It was actually more honest and honorable when you simply rejected our efforts to meet altogether. We will not respond to your RFI until a reasonable RFI is sent. We will await your next ULP and we will respond accordingly.

In a May 1, 2014 email[63] Bettcher replied to the information request with some of the information requested and asking the relevance of other information. The responses and information provided on May 1, 2014, were as follows:

> Please explain the relevance of each item not addressed in the RFI below to SEIU activities as they relate to E Center. We will provide information that is relevant to the SEIU—represented staff, however, we don't believe that the information requested below is relevant to any current case/actions of SEIU.
>
> II. Employee Data
>
> 1. The requested for union represented staff is attached. Please explain the relevance for the requested employee data for non-union staff information.
>
> 2. The current salary schedule for union represented staff is attached. Please explain the relevance for the requested employee data for non-union staff information.
>
> 3. The union has received all newly created positions for union represented staff at the time of creation. Per Art 2.2 of the CBA, a meet and confer was conducted for any new classification created within the last four years.
>
> 4. Please see attached for the organizational charts for Oct 2013 and March 2014. There is no record of any previous charts.
>
> III. Financial Data
>
> 1. State Funding- Please explain the relevance for the requested financial data.
>
> 2. Approved Budgets- Please explain the relevance for the requested financial data.
>
> 3. Quarterly Financial reports- Please explain the relevance for the requested financial data

[63] C Exh. 13.

4. Internal/External audit- Please explain the relevance for the requested financial data.

There are currently 207 Union FTEs. The current vacancy list is attached. The salaries are listed in the attached compensation plan.

Items 1-11. Please explain the relevance of the requested financial data.

IV. Employment and Wages

Items 1-4. Please explain the relevance of the employment and wage information.

V. Health Insurance

1. Please see attached for the current medical plan data which was provided on Apr 10, 2014. Please explain the relevance for the requested previous three years of information.

2. Please see attached for the 2014 union medical plan enrollment form which lists the out-of-pocket costs for the HSA plan. The medical plan data sheet provides what each individual employee is contributing.

3. Please explain the relevance for the requested information for non-union staff.

Items 4-6. Please explain the relevance of the requested benefit information.

VI. Miscellaneous

Items 1-2. Please explain the relevance of the requested miscellaneous information.

3. Please see attached for the Mar 2014 Org Chart and well as 2014 HS Staffing Plans.

Items 4-8. Please explain the relevance of the requested miscellaneous information.

VII. Employment and Wages

Items 1-5. Please explain the relevance of the requested employment and wage information.

VIII. Miscellaneous

1. Duplicate question.

2. Duplicate question

3. Duplicate question.

Items 4-9. Please explain the relevance of the requested miscellaneous information.

10. The CEO sent the attached letter to the union on Nov 21, 2013 in an attempt to discuss the issue. The union provided no response.

b. The HR Director sent the attached message to the union on Dec 3, 2013 in attempt to discuss the issue. The union declined the request.

c. Legal counsel for E Center sent the attached message to the union on Jan 8, 2014 in an attempt to discuss the issue. The union provided no response.

d. The union sent the attached message on Mar 12, 2014 to the HR Director in attempt to discuss the issue. The HR Director responded to the request and a date was set to meet and confer but the union later declined to meet.

Of the information the Union requested on February 28, 2014, Respondent provided the Union only the names and titles of employees, the newly created positions for the current year, the organizational chart for October 2013 and March 2014, a document for April 2014, that listed then-current open positions, the names of employees and the health plans they had selected for the current fiscal year, the cost of the plan for each employee without co-pays or any other out-of-pocket expenses, the current list of positions and the hours for April 2014, without the salary savings or the list of all open funded positions and unfunded positions.

C. Analysis

1. Unilateral changes

It is well established that an employer violates Section 8(a)(5) and (1) of the Act when it makes substantial and material unilateral changes during the course of a collective-bargaining relationship absent impasse on matters that are mandatory subjects of bargaining. *NLRB v. Katz*, 369 U.S. 736 (1962).

However, there are limited situations in which an employer's unilateral action may be justified absent overall impasse. In *Bottom Line Enterprises*, 302 NLRB 373, 374 (1991), the Board recognized two limited exceptions to the general rule that changes in terms and conditions of employment may not be made absent impasse. One situation occurs when a union engages in tactics designed to delay bargaining and the second exits when economic exigencies compel prompt action. The Board has limited its definition of exigent economic circumstances to, ''extraordinary events which are 'an unforeseen occurrence, having a major economic effect [requiring] the company to take immediate action.''' *Hankins Lumber Co*., 316 NLRB 837, 838 (1995), quoting *Angelica Healthcare Services*, 284 NLRB 844, 852–853 (1987). Absent a dire financial emergency, the Board has held that economic events such as loss of significant accounts or contracts, operation at a competitive disadvantage, or supply shortages do not justify

unilateral action. The Board has similarly held that under exigent circumstances an employer need not give notice and bargain concerning the effects of closing its operations, but has limited its definition of such exigent circumstances to situations such as where an employer lacked funds to continue operating and paying employees, or lost performance bonds required by law and had the bank end the employer's line of credit. See *Your Host, Inc*., 315 NLRB 295, 297 (1994).

In *RBE Electronics*, 320 NLRB 80, 82 (1995), the Board expanded on *Bottom Line* and explained the appropriate analysis in determining whether an employer's unilateral action is justified by an economic exigency:

> Thus, where we find that an employer is confronted with an economic exigency compelling prompt action short of the type relieving the employer of its obligation to bargain entirely, we will hold under the *Bottom Line Enterprises* exigency exception, as further explicated here, that the employer will satisfy its statutory obligation by providing the union with adequate notice and an opportunity to bargain. In that event, consistent with established Board law in situations where negotiations are not in progress, the employer can act unilaterally if either the union waives its right to bargain or the parties reach impasse on the matter proposed for change.
>
> Consistent with the requirement that an employer prove that its proposed changes were ''compelled,'' the employer must additionally demonstrate that the exigency was caused by external events, was beyond the employer's control, or was not reasonably foreseeable.

a. The extended spring break closure

Respondent does not dispute that it made changes to employee terms and conditions of employment by changing health care benefits and increasing the duration of spring break. Moreover, it is clear that the extension of the spring break was a mandatory subject of bargaining. *Gannett Rochester Newspapers,* 319 NLRB 215 (1995). However, Respondent contends that it was compelled by economic exigency to make changes in the duration of its spring break and to its employee health care plans. It argues further that the Union waived its right to bargain over the spring break closure by refusing to request bargaining when it had notice of the proposed change and by means of the management-rights clause in the expired collective-bargaining agreement.

General Counsel argues that Respondent failed to give the Union notice of the change to a ten day spring break closure, that the Union did not agree to the ten day spring break closure, and that Respondent cannot meet its burden to show that economic exigency justified the unilateral ten day spring break closure.

i. Notice to the Union of the extended spring break closure

The record reflects that the Union first received notice of a proposed extended spring break closure on about February 10, 2014, when Keller gave the union representatives a copy of a proposed letter to bargaining unit employees advising them of the additional 5 days Respondent would be closed for spring break. While telling the Union it had 5 days to respond to this change, Respondent in fact sent the notice to

employees the following day in the absence of any agreement by the Union to the change. While Respondent argues the change was not implemented until March 10, 2014, it is clear from the text of the letter that it had decided to make the change when the letter was sent to unit employees on February 11:

> E Center customarily takes 5 days off for Spring Break but the fiscal situation requires that all Head Start sites take 10 days off for Spring Break in 2014 reducing the service days to 128.
>
> The extended break has been shared with OHS Region 9, as well as SEIU. The program closure dates are as follows:
>
> Chico sites,(Elm, Rosedale, Chapman, and Mariposa)
> March 10th-March 21st
>
> All other Head Start sites
> April 7th-April 18th

This notice was not timely as it did not give the Union a reasonable opportunity to bargain. Moreover, it appears that at the time the Union first received notice of this change, Respondent has already made the decision to extend spring break from 5 to 10 days. Here the record shows that Respondent had no intention of bargaining about this subject and did nothing more than inform the Union of a fait accompli. *Intersystems Design Corp.,* 278 NLRB 759 (1986).

ii. Economic exigency

Respondent contends that it was compelled by economic exigency to make the unilateral change to the length of spring break. In either the *Bottom Line* or the *RBE* test, to avoid its obligation to bargain to impasse Respondent must show that the economic exigency was caused by external events, was beyond its control, or was not reasonably foreseeable. Respondent is unable to establish these circumstances. It is clear that Respondent's own mismanagement of its budgetary process caused its economic dilemma. In making its grant proposals to Head Start in 2013, Respondent made faulty and inappropriate assumptions regarding absenteeism that created its deficit. Moreover, its past illegal practice of sharing funds among its programs caused lax oversight of its budgets and further contributed to its fiscal problems. Thus, the record is clear that the budget shortfall in the Head Start program was not caused by an external event but was self inflicted, within its own control and therefore foreseeable. I find that the first exception of *Bottom Line* has not been established by Respondent. A similar conclusion was reached in *Hartford Head Start Agency*, 354 NLRB 164, 185–188 (2009), where the Respondent argued that a shortfall of funds caused by a change from the funding source was unforeseen.

iii. Delays in bargaining

Respondent also argues that the second exception under *Bottom Line* applies because the Union engaged in tactics designed to delay bargaining. I conclude, contrary to Respondent's assertion, that the facts herein do not meet the standard for pronounced delays and obstruction necessary to establish this exception.

In *M&M Contractors*, 262 NLRB 1472 (1982), the Board held the employer was relieved of its obligation to bargain to impasse where it had given the union 5 days' notice of proposed changes but the union had already refused to agree to schedule bargaining sessions with the employer for over seven months. The Board held that ordinarily 5 days' notice would be insufficient notice to the union. However, in view of the union's intransigence in scheduling bargaining for over 7 months, the Board found the 5-day notice sufficient. In *AAA Motor Lines*, 215 NLRB 793, 794 (1974), the union refused to meet for a period of 2-1/2 and months after demand for bargaining and notice to the union of the employer's proposed changes prior to the contract's expiration. Under these circumstances the Board found the employer did not violate the Act in unilaterally implementing changes to its employees' terms and conditions of employment.

Here the record reflects that by August 28, 2013, the parties had reached tentative agreements on all provisions of a new contract. The Union ratified the agreement on September 25, 2013, but based upon Ikyurav's recommendation, Respondent failed to ratify the tentative agreement. It was not until November 21, 2013, that Ikyurav indicated that the board of directors had refused to ratify the proposed collective-bargaining agreement and directed her to go back to the bargaining table. Ikyurav requested further bargaining as soon as possible. From October 31, 2013 to at least November 6, 2013, the Union sought Respondent's ratification of the new collective- bargaining agreement. The Union's position from October 2013, until at least July 16, 2014, was that it did not have to bargain further over terms of a collective -bargaining agreement since the parties had agreed to a new contract. Region 20 agreed with this position, issuing complaint on May 30, 2014, alleging Respondent violated Section 8(a)(5) of the Act by refusing to execute the tentative collective-bargaining agreement. It was not until July 16, 2014, 6 days before the trial herein commenced, that the Region dismissed this allegation. While the Union delayed in bargaining with Respondent over the issues of health care benefits, its position was not unreasonable, particularly given the Region's issuance of a complaint alleging Respondent violated Section 8(a)(5) of the Act by refusing to sign the tentative contract.

Respondent's first request for bargaining over health care issues occurred sometime in November 2013, when Ikyurav told Lee she was requesting further bargaining over health issues while the issue of signing the tentative agreement was still undecided. On December 3, 2013, Respondent's human resources director, Bettcher, requested that the parties schedule a collective-bargaining meeting on December 18, 2013. On January 9, 2014, Respondent's attorney, Clark Malak, offered to bargain over four items including health care benefits. However, Malak's January 9, 2014 letter was not a notice of any changes Respondent proposed. Indeed, his letter constituted preliminary discussion points and he indicated that final proposals would be forthcoming if the Union did not agree to bargain. Moreover, his letter did not mention spring break changes.

However, commencing in January 2014, after the Union filed the charge in Case 20–CA–120259 on January 8, 2013, alleging Respondent had violated the Act by refusing to sign an agreed-upon collective-bargaining agreement, Respondent changed its position and refused to bargain with the Union pending the outcome of the unfair labor practice investigation.

With respect to the spring break closure, there is no evidence that Respondent ever requested bargaining over the length of spring break. It was not until February 10, 2014, that

Respondent gave the Union notice of its plans to lengthen spring break from 5 to 10 days. By this time Respondent was refusing to bargain with the Union over terms and conditions of employment due to the Union's filing of unfair labor practice charges. The Union protested the short notice and demanded until February 17, 2014, to speak with its members about this proposed change. As noted above, no agreement was reached by the parties concerning the length of spring break on February 10. Contrary to the Union's request, on February 11, 2014, Respondent gave notice to its employees that it intended to make the change to the length of the spring break. The Union was presented with a fait accompli without adequate notice to bargain. Based upon Respondent's position at the time, it had no intent to bargain with the Union as stated in numerous emails from Respondent's management. *Johns-Manville Sales Corp.,* 282 NLRB 182 (1986).

Under all of these circumstances, I find that Respondent has failed to establish that there was unreasonable delay by the Union in bargaining over the issue of either health benefits or the length of spring break. *M&M* and *AAA* are distinguishable. In neither case did the unions maintain a good-faith basis for their refusal to bargain. In neither case did the employers themselves refuse to bargain over their proposals. Further the length of time in *M&M* and *AAA* in which the unions refused to meet and bargain substantially exceeded the period of time involved in this case in which the Union would not bargain over terms of a new contract. Indeed the Union had already engaged in good-faith bargaining for over a year that they felt resulted in a binding agreement.

iv. Waiver

Contrary to Respondent's assertions, the Union did not waive its right to bargain over changes to the spring break closure as a result of the management-rights clause in the expired collective-bargaining agreement. The management-rights clause provided:

MANGEMENTS RIGHTS

ARTICLE 6

> 6.1 The Union hereby recognizes the prerogative of the Agency to operate and manage its service delivery, operations, and responsibilities according to its determination. As the employer in this contract, the Agency retains all of the functions, rights, powers, or authority not specifically abridged, delegated or modified by this Agreement. By way of illustration and not by way of limitation, the Agency shall have the right to:
>
> . . . .
>
> 6.1.2 Direct the work of all of its personnel; determine the number of shifts and hours of work and starting times and scheduling of all the foregoing. Further, it shall maintain the right to establish, modify or change any work or business hours or days.[64]

[64] GC exh. 11, p. 2.

Initially, a waiver by a union of its right to bargain over mandatory subjects must be clear and explicit. *Metropolitan Edison Co. v. NLRB,* 460 U.S. 693 (1983). More significantly, a management rights clause does not survive contract expiration, absent the parties' intent to the contrary, since it is not a term or condition of employment. Here there is no evidence that any such waiver in that clause was intended to survive the contract. *Control Services,* 303 NLRB 481 (1991). Since this contract provision did not survive the contract expiration, it cannot constitute a waiver of the Union's right to bargain over Respondent's change in the length of spring break.

Respondent's citations to *Haddon Craftsmen,* 300 NLRB 789, 790, 971 (1990), and *Jim Walter Resources, Inc.,* 289 NLRB 1441 (1988), are inapposite. In *Haddon*, the employer notified the Union of a proposed reclassification in mid-April. Not until June 6, did the Union protest the proposed change. Here unlike *Haddon*, it is clear from the language of the notice to employees issued on February 11, 2014, that Respondent intended to make changes to the spring break forthwith. Moreover, as noted above, Respondent refused to bargain about this or any other mandatory subject of bargaining during this period of time.

I find that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing an extended spring break.

b. Health care

It is well established that employee health benefits are a mandatory subject of bargaining. *KSM Industries, Inc.,* 336 NLRB 133, 134-135 (2012).

Respondent contends that the *Bottom Line* exceptions, economic exigency and the Union's tactics designed to delays in bargaining, allowed it to make unilateral changes in the health care benefits of bargaining unit employees absent impasse. It argues further that the Union waived its right to bargain over the health care changes by refusing to request bargaining when it had notice of the proposed change.

General Counsel argues that Respondent did not give the Union notice of its change to bargaining unit employees' health benefits but informed the Union of its *fait accompli* and that the Union did not waive its right to bargain over healthcare benefits because Respondent did not afford the Union a meaningful opportunity to bargain.

i. Notice to the Union of changes to the health care plan

While Respondent may have requested bargaining over health care issues as early as November 2014 and made proposals in Attorney Malak's letter of January 9, 2014, Respondent never notified the Union that it intended to implement these proposals.

In the February 27, 2014 union stewards' meeting Ikyurav did not give the Union notice of the proposed changes in Respondent's health care benefits. The minutes of the meeting reflect that she made reference to some changes but the specifics of the changes were not set forth until

Bettcher's March 7, 2014 letter[65] to bargaining unit employees advising that they must submit an enrollment form, elections for changes, or an opt-out form by March 24. March 7, 2014, was the first notice the Union had of Respondent's proposed changes to the health care plans for unit employees.

In the February 27 meeting, Ikyurav made it clear that the meeting was not a bargaining session and she could not bargain because of the pending unfair labor practice charges. In response to Union Representative Medina's question as to the CBA, Anaman-Ikyurav stated that "because charges were filed against E Center, both parties would have to wait for the outcome of that decision by a party to be made before further discussions could be made."

After receiving notice of the new health care plans, on March 11, 2014, Medina sent Ikyurav an email requesting the benefits package that was issued to employees on March 7, and provided her availability to meet. On March 12, 2014, Bettcher told Medina that they could not bargain about the health care benefits due to the, "current NLRB charge regarding the CBA." Nevertheless, Medina again requested bargaining over the health care plan. While on March 17, and 18, Bettcher emailed Medina about proposed dates to meet regarding the health benefits, Medina accepted but she later withdrew her availability. On April 1, Respondent provided new benefits to its employees.

ii. Economic exigency

As discussed above, Respondent has failed to establish that economic exigency warranted its implementation of the new health care benefits under the *Bottom Line* exception. Respondent's mismanagement of its budgetary process caused its economic dilemma. The budget shortfall in Respondent's Head Start program was not caused by an external event but was self inflicted, within its own control and therefore foreseeable. I find that the first exception of *Bottom Line* has not been established by Respondent in implementing the new health care benefits for bargaining unit employees. *Hartford Head Start Agency*, 354 NLRB 164, 185–188 (2009).

iii. Delay in bargaining

Likewise, for the reasons set forth above I find that Respondent has not established that the Union engaged in tactics designed to delay bargaining. Moreover, by the time that the Union received notice from Respondent of the changes it intended to make to the health care plans, Respondent itself was refusing to bargain over this mandatory subject of bargaining until the Union's unfair labor practice charges were resolved. Respondent had no intent of bargaining over health care with the Union and it is clear from the language of Bettcher's March 7, 2014 letters notifying employees of the health care changes that Respondent intended to implement the changes at that time. The Union was faced with a fait accompli excusing any demand for bargaining. *National Steel & Shipbuilding Co.,* 348 NLRB 320, 324 (2006).

iv. Waiver

For similar reasons, Respondent's argument that the Union waived its right to bargain over the health care changes fails. As discussed above, the Union cannot be found to have

[65] Respondent's exhibit 7, joint exhibit 12.

waived bargaining where it did not receive clear and timely notice, nor can it be found to have waived bargaining by failing to pursue negotiations over changes that were presented as a fait accompli. *Pontiac Osteopathic Hospital,* 336 NLRB 1021, 1023 (2001). Here, the Union first received notice of Respondent's specific plans to implement health care benefits changes on March 7, 2014. The Union immediately demanded bargaining but Respondent made it clear it had no intention of bargaining over this mandatory subject. *Tesoro Refining & Marketing Co.,* 360 NLRB No. 46, slip op. at ___fn. 10 (2014).

Moreover, by March 7, 2014, and as late as April 1, 2014, Respondent had failed to respond to the Union's February 28, 2014, information request for information dealing with health benefits. In fact Respondent never provided information on much of the Union's request for information on health care benefits. By refusing to provide necessary and relevant information regarding health benefits Respondent failed to provide the Union a meaningful opportunity to bargain. Absent an opportunity to bargain, there is no basis to find waiver. *Coalite, Inc.,* 278 NLRB 293 (1986).

I find that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally implementing changes to bargaining unit employees' health care plans.

2. Information requests

An employer has an obligation to furnish relevant information to collective bargaining representatives during bargaining and in labor-management relations during the term of an agreement. *NLRB v. Truitt Mfg. Co.*, 351 US 149 (1956); *NLRB v. Acme Industrial Co.,* 385 US 432 (1967).

Information concerning bargaining unit employees' terms and conditions of employment is presumptively relevant and the employer has the burden of proving lack of relevance. *AK Steel Co.,* 324 NLRB 173 (1997). However, the union has the burden of showing relevance of information concerning non unit employees. *National Grid USA Service. Co.,* 348 NLRB 1235, 1235, 1242–1243 fn.1 (2006). The Board has held, "that burden is not exceptionally heavy." *Duquesne Light Co.,* 306 NLRB 1042, 1042–1044 (1992).

General Counsel contends that the information requested by the Union was relevant and necessary to the Union's role as collective-bargaining representative. General Counsel also contends that Respondent's replies on May 1, 2014, were deficient where it requested the relevance of the information because this information was either presumptively relevant or the relevance was established by the Union within its February 28, 2014 request.

Respondent takes the position that its refusal to provide information about new hires was lawful because the request made it clear that the information was intended to assist the Union in a pending unfair labor practice complaint. Respondent also contends that compliance was not required because the purpose of the information request was delay and the request for information was unduly burdensome.

In the instant case the Union's February 28, 2014 information request asked for information including:

> [N]ames, titles, phone numbers, home addresses, dates of hire, and current hourly salaries employees; newly created job descriptions and positions for the past four years and annual costs; organizational chart for current fiscal year and past three years with classifications and FTE; total dollar amount for the past three years for extra help, temporary, contract, merit increases, bonuses, overtime pay; paid time off balance for the current and past three years; number of employees enrolled in the current health plans for the current and previous three years; list of all who participated in mandatory time off; total salary savings to Respondent for participation in mandatory time off; number of unfilled FTE and salary savings, number of vacancies per month for current fiscal year and salary savings for the previous four fiscal years for unfilled FTE's; out of pocket costs for the plans selected; savings from employees who opted-out of insurance; total cost of paying 100% of employee-only health insurance and dental; number of unfilled FTEs and salary savings for the current year; COLA amount from 2007 to the present; and amount of overtime 2010-2013.

Some of these requests dealt with bargaining unit employees' terms and conditions of employment and were presumptively relevant. Some of the information requested dealt with non-bargaining unit employees. Given Respondent's position that it was claiming poverty, all of this information was relevant to establishing the credibility and validity of Respondent's claim.

There were also requests to verify the basis for statements made by Respondent's managers claiming Respondent was in fiscal trouble. Based upon Respondent's claim of poverty, this information was also relevant to determining the validity of these claims.

On March 6, 2014, Respondent initially refused to provide any information. In its May 1, 2014 response Respondent failed to provide the phone numbers, home address, dates of hire, and hourly salaries of bargaining unit employees; newly created positions within the bargaining unit for the past 4 years; list of all employees who participated in mandatory time off programs, and salary savings for employees who participated in mandatory time off programs; vacancies per month for the past 4 years and any salary savings; dollar amount for the past 3 years for temporary, contracts, merit increases, bonuses, and overtime pay; the current and past 3 years' PTO balance; number of employees enrolled in the current health plan for the current and past 3 years; out of pocket costs for these plans; savings for employees who opted out of insurance; total cost for 100-percentemployer paid health and dental; salary savings and open funded and unfunded positions; the COLA amount for 2007 to the present, total salary savings due to contract negotiations, or winter and spring break closures; and amount of overtime from 2010 to 2013 and reason for overtime for bargaining unit employees.

The information provided by Respondent on May 1, 2014, included:

> [N]ewly created positions for the current year; the organizational chart for October 2013 and March 2014; current open positions; names of employees and the health plans they had selected for the current fiscal year; the cost of the plan for each employee without co-pays or any other out-of-pocket expenses; the current list of positions and the hours for April 2014, without the salary savings or the list of all open funded positions and unfunded positions.

With much of the information requested Respondent's response was, "please explain the relevance of the information requested." Respondent's position cannot be considered a request for an accommodation from the Union since it merely questions the relevance of the information sought. As noted above, all of the information was either presumptively relevant or was made relevant by Respondent's claim of poverty.

Not only must an employer furnish relevant information it must do so in a timely manner. An unreasonable delay in furnishing information is a violation of Section 8(a)(5) of the Act. *Iron Tiger Logistics, Inc.,* 359 NLRB No. 13, slip op. at 2 (2012); *Woodland Clinic,* 335 NLRB 735, 736 (2006).

The Board considers the totality of the circumstances in determining whether an employer has unlawfully delayed in responding to an information request, including the complexity and extent of information sought, its availability, and the difficulty in retrieving the information. *West Penn Power Co.,* 339 NLRB 585, 587 (2003), enfd. in pertinent part 394 F.3d 233 (4th Cir. 2005); *Postal Service,* 359 NLRB No. 4, slip op. at 2–3 (2012); *Postal Service,* 308 NLRB 547, 551 (1992).

Here, after the Union's February 28, 2014 request for information, Respondent on March 6, 2014, refused to provide any information. It was not until after the Union filed an unfair labor practice charge on April 1, 2014, that Respondent provided any response to the Union on May 1, 2014. The Respondent's response came 2 months after the initial request and after Respondent's unilateral changes to health benefits took effect. Therefore, based on the absence of evidence that Respondent made a reasonable good-faith effort to promptly respond to the Union, Respondent unlawfully delayed in providing the information in violation of the Act.

Respondent contends that it had no obligation to provide information to the Union because the information request was designed as a vehicle for discovery during the pendency of the Boards pending unfair labor practice cases herein.

In *Unbelievable, Inc.,* 318 NLRB 857, 877 (1995), the Board affirmed Administrative Law Judge (ALJ) James Kennedy who found that the employer's refusal to provide information about new hires was lawful despite the request being for presumptively relevant information. In *Unbelievable* the General Counsel's complaint alleged a violation of Section 8(a)(5) and (1) of the Act in the Respondent's refusal to utilize the contractual hiring hall. The ALJ concluded that given the timing of the Teamsters demand for information regarding new hires, coming in January 1991, about 2 weeks after the complaint issued alleging hiring hall violations, it is clear that the request for information was indeed aimed to assist the Teamsters and the General Counsel in the presentation of evidence relating to the complaint. The ALJ concluded:

> The Board has recently held that even if the material sought would have been producible for collective-bargaining or representational purposes, it is not producible as a substitute for discovery. *Union-Tribune Publishing Co*., 307 NLRB 25 (1992), It is well established that the Board's procedures do not include prehearing discovery. Accordingly, when information is sought that relates to a pending 8(a)(3) charge, the Board generally will not find that a refusal to provide that information violates Section 8(a)(5). Any other rule

would, in effect, impose a discovery requirement where none otherwise exists. See, e.g., *WXON-TV*, 289 NLRB 615, 617, 618 (1988).

Union-Tribune Publishing Co., 307 NLRB 25, 26 (1992), is a case involving unfair labor practice charges alleging that the employer violated Section 8(a)(3) of the Act by terminating its employee. Those charges were still pending in November when the discriminatee was suspended and then terminated. When the discriminatee asked the Respondent for information relating to her suspension and discharge, the Respondent refused, citing the pending charges. The Board noted that the judge found the suspension and discharge to have been unlawfully motivated, in part because of the Respondent's refusal to confront the discriminate at trial with the requested information. The Board held that while such an inference normally would be justified, it was improper in the circumstances of this case. The Board held that the Board's procedures do not include prehearing discovery and when information is sought that relates to a pending 8(a)(3) charge, the Board generally will not find that a refusal to provide that information violates Section 8(a)(5). The Board reasoned that any other rule would, in effect, impose a discovery requirement where none otherwise exists citing *WXON-TV*, 289 NLRB 615, 617, 618 (1988).

In *WXON-TV*, 289 NLRB 615, 617–618 (1988), it was alleged that the employer violated Section 8(a)(5) of the Act by unilaterally eliminating its production department without bargaining with the Union, resulting in the layoff of three bargaining unit employees. The judge found that the failure to bargain over this decision violated Section 8(a)(5) and (1) of the Act. The Union requested certain information from the employer concerning the reasons for the termination of the bargaining unit employees, documents referring to that decision, the status of in-house production work, the status of public service broadcasting spots, production service subcontracting, duties of the chief operator and bargaining unit work being performed by supervisory personnel. The next day the Union filed the unfair labor practice charge alleging that the Respondent violated Section 8(a)(5), (3), and (1) by unilaterally changing terms and conditions of employment of bargaining unit employees, assigning quasi-supervisory duties to unit employees, terminating and discriminating against employees, and refusing to provide requested information. The Board found no violation of Section 8(a)(5) of the Act holding that the Union's information request in the facts of this case, "was akin to a discovery device pertinent to its pursuit of the unfair labor practice charge rather than to its duties as collective-bargaining representative. *Huck Mfg. Co.,* 254 NLRB 739, 755 (1981); *American Oil Co.,* 171 NLRB 1180, 1188 (1968)."

In *Unbelievable, Union-Tribune or WXON,* the information request called for information that went to the substance of the charges filed or the complaint issued. The Board found that this amounted to improper discovery in a Board proceeding. Here, the information request was not for the purpose of assisting the General Counsel in an unfair labor practice investigation or trial. The nature of the charges and the complaint allegations herein is that Respondent failed to provide relevant and necessary information and that Respondent made unilateral changes to terms and conditions of employment. No part of the information request goes to the allegations of unilateral changes. The information requested cannot help to establish that Respondent violated the Act by refusing to supply information, rather General Counsel must show that the information was requested, that it was relevant and necessary to the Union's obligation as collective-bargaining representative and that Respondent refused or unreasonably delayed in furnishing the requested information. Nor does the requested information assist in establishing

the elements of a unilateral change. None of these elements of the violation are supported by the information request and therefore the information request does not constitute improper discovery in a Board proceeding.

Respondent's defense that compliance with the information request was not required because the purpose of the request was delay is not supported by the evidence. Respondent's reliance on *ACF Industries, LLC,* 347 NLRB 1040, 1042–1043 (2006), is misplaced. The Board in *AFC* concluded that the facts established that the union's information request was made for the purpose of forestalling implementation of the employers' final offer after 2 months of negotiations and 3days before the Respondent implemented its final offer.

Here, the Union's information request was made when Respondent had pled poverty, before Respondent notified the Union of its plan to change employees' health benefits, absent any evidence of impasse, when Respondent had failed to bargain over the changes to the spring break or the health care benefits and in the absence of a showing of economic exigency by Respondent. Under these facts, I cannot conclude that the Union's information request was made for the purpose of forestalling bargaining.

Respondent also argues that the information request was unduly burdensome and provided no time for compliance, citing *Safeway Stores, Inc. v. NLRB* 691 F.2d 953, 956 (10th Cir.1982). *Safeway Stores* does not support Respondent's contention. In *Safeway Stores*, the Court, in agreement with the Board, held that the union's information request was not burdensome. However in *Mission Foods*, 345 NLRB 788 (2005), the Board held that the respondent in claiming an information request overly broad and unduly burdensome to produce, had the obligation to raise, at the time of the request, any issue concerning the possible burden of complying with the Union's request, citing with approval *Honda of Hayward*, 314 NLRB at 450, citing *Oil Workers Local 6-418 v. NLRB*, 711 F.2d 348, 353 fn. 6 (D.C. Cir. 1983). The Court in Local 6-418 held that if a party, "does wish to assert that a request for information is too burdensome, this must be done at the time information is requested, and not for the first time during the unfair labor practice proceeding."

In addition, the Board has held that "an employer may not simply refuse to comply with an ambiguous or overbroad information request, but must request clarification or comply with the request to the extent that it encompasses necessary and relevant information." *Superior Protection Inc*., 341 NLRB 267, 269 (2004), enfd. 401F.3d 282 (5th Cir. 2005). *Streicher Mobile Fueling, Inc*., 340 NLRB 994, 995 (2003), affd. 138 Fed. Appx. 128, 2005 WL 1395063 (11th Cir. 2005) (unpublished). No such request was made here. As noted above, Respondent merely questioned the relevance of information that was presumptively relevant or made relevant by Respondent's claim of poverty.

Further, although the Board and courts have held that there are some acceptable limits on information requests that would otherwise entail an undue burden, the onus is on the employer to show that production of the data would be unduly burdensome, and to offer to cooperate with the union in reaching a mutually acceptable accommodation. *Yeshiva University*, 315 NLRB 1245, 1248 (1994); *U.S. Testing Co. v. NLRB*, 160 F.3d 14, 20–21 (D.C. Cir. 1998); *Soule Glass & Glazing Co. v. NLRB*, 652 F.2d 1055, 1094 (1st Cir. 1981), abrogated on other grounds *NLRB v. Curtin Matheson Scientific, Inc.*, 494 U.S. 775, 786 fn. 7 (1990).

Here, the Respondent has failed to proffer any evidence in support of its assertion that the information requests would be unduly burdensome, and there is no evidence that it has made any effort to reach a mutually acceptable accommodation with the Union. Accordingly, I find that the assertion that the information request was overbroad and burdensome does not excuse the Respondent's failure to comply with the request.

Accordingly, I find that Respondent violated Section 8(a)(5) and (1) of the Act by refusing to furnish the Union with information and in unreasonably delaying the furnishing of information from March 3 to May 1, 2014.

CONCLUSIONS OF LAW

1. Respondent E Center is an employer engaged in commerce and in an industry affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Service Employees International Union, Local 1021, CLC (Union), is a labor organization within the meaning of Section 2(5) of the Act and is the exclusive collective-bargaining representative of Respondent's employees in the following appropriate collective-bargaining unit:

> All regular employees of E Center's Head Start Programs in the following classifications:
>
> Head Start: Bus Driver, Cook Aide, Cook, ERSEA Specialist, Family Educator, Family Service Worker, Janitor, Lead Transporter, Secretary, Teacher/Family Educator, Teacher, Teacher Aide, Teacher Assistant, Transporter, Transportation Aide.
>
> Early Head Start: Infant Toddler Home Base Aide, Infant Toddler Family Educator.
>
> Migrant Head Start: Associate Family Advocate, Associate Teacher, Bus Driver, Cook, Cook Aide, ERSEA Specialist, Family Advocate/Family Childcare Specialist, Family Advocate, Groundskeeper, Health and Nutrition Specialist, Secretary, Teacher Assistant, Teacher, Transportation Aide.
>
> Shared: Health & Nutrition Specialist, Education/ Special Needs Specialist, Facilities Specialist, Secretary, and Receptionist.

3. By engaging in the following conduct, the Respondent committed unfair labor practices in violation of Section 8(a)(5) and (1) of the Act:

a. Unilaterally changing bargaining unit employees' spring break from 5 to 10 days.

b. Unilaterally changing bargain unit employees' health care benefits.

c. Refusing to provide and unreasonably delaying in providing the Union with information relevant and necessary to its function as collective bargaining representative of bargaining unit employees.

REMEDY

The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring,* 356 NLRB No. 8 (2010).

The Board has held that discriminatees be reimbursed for any excess taxes owed as a result of a lump-sum backpay award and that Respondent be ordered to complete the appropriate paperwork as set forth in IRS Publication 975 to notify the Social Security Administration what periods to which the backpay should be allocated as requested in the remedy section of the complaint herein.

In *Don Chavas*, *LLC* d/b/a*Tortillas Don Chavas,* 361 NLRB No. 10 (2014), Board ordered that it will routinely require the filing of a report with the Social Security Administration allocating backpay awards to the appropriate calendar quarters. The Board also held that it will routinely require respondents to compensate employees for the adverse tax consequences of receiving one or more lump-sum backpay awards covering periods longer than 1 year. The Board concluded that it is the General Counsel's burden to prove and quantify the extent of any adverse tax consequences resulting from the lump-sum backpay award and that such matters shall be resolved in compliance proceedings.

Pursuant to *Tortillas Dan Chavas*, I will order that Respondent shall file a report with the Social Security Administration allocating any backpay awards to the appropriate calendar quarters.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended.[66]

ORDER

Respondent, E Center, Marysville, California, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Refusing to bargain in good faith with Service Employees International Union, Local 1021, CLC as the exclusive collective-bargaining representative of its employees in the following collective-bargaining unit:

[66] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections shall be waived for all purposes.

All regular employees of E Center's Head Start Programs in the following classifications:

Head Start: Bus Driver, Cook Aide, Cook, ERSEA Specialist, Family Educator, Family Service Worker, Janitor, Lead Transporter, Secretary, Teacher/Family Educator, Teacher, Teacher Aide, Teacher Assistant, Transporter, Transportation Aide.

Early Head Start: Infant Toddler Home Base Aide, Infant Toddler Family Educator.

Migrant Head Start: Associate Family Advocate, Associate Teacher, Bus Driver, Cook, Cook Aide, ERSEA Specialist, Family Advocate/Family Childcare Specialist, Family Advocate, Groundskeeper, Health and Nutrition Specialist, Secretary, Teacher Assistant, Teacher, Transportation Aide.

Shared: Health & Nutrition Specialist, Education/ Special Needs Specialist, Facilities Specialist, Secretary, Receptionist.

(b) Unilaterally and without bargaining with the Union:

Changing its spring break closure from 5 to 10 days.
Changing its bargaining unit employees' health care plan.

(c) Refusing to provide and unreasonably delaying in providing information to the Union that is relevant and necessary to its function as collective bargaining representative of bargaining unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) At the request of the Union rescind the extended spring break period of 10 days.

(b) At the request of the Union rescind any changes to its health care plans and restore those health care plans contained in the parties' expired collective-bargaining agreement.

(c) Provide the Union with the information requested in its February 28, 2014, information request that has not been supplied.

(d) Make whole any employees for lost wages and other benefits as a result of our unlawful closure for an additional 5 days during spring break in 2014. My recommended Order further requires that backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), with interest as prescribed in *New Horizons for the*

Retarded, 283 NLRB 1173 (1987), plus daily compound interest as prescribed in *Kentucky River Medical Center,* 356 NLRB No. 8 (2010).

(e) Make whole any employees for costs associated with our change in health care benefits, including additional premiums paid for themselves and dependents, and any out of pocket expenses for medical or dental care or drugs.

(f) The Respondent shall be required to post a notice that assures its employees that it will respect their rights under the Act. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. *J. Picini Flooring,* supra..

(g) Compensate employees who lost wages due to the extended 5 days of spring break in 2014 for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file a report with the Social Security Administration allocating the backpay award to the appropriate calendar quarters.

(h) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(i) Within 14 days after service by the Region, post at its facilities in Marysville, California, copies of the attached notice marked "Appendix."[67] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 10, 2014.

67 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(j) Within 21 days after service by the Region, filed with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. November 10, 2014

John J. McCarrick
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

FEDERAL LAW GIVES EMPLOYEES THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Chose not to engage in any of these protected activities.

After a trial at which we appeared, argued and presented evidence, the National Labor Relations Board has found that we violated the National Labor Relations Act and has directed us to post and obey this notice to employees and to abide by its terms.

Accordingly, we give our employees the following assurances:

WE WILL NOT *r*efuse to bargain in good faith with Service Employees International Union, Local 1021, CLC as the exclusive collective-bargaining representative of its employees in the following collective-bargaining unit:

All regular employees of E Center's Head Start Programs in the following classifications:

Head Start: Bus Driver, Cook Aide, Cook, ERSEA Specialist, Family Educator, Family Service Worker, Janitor, Lead Transporter, Secretary, Teacher/Family Educator, Teacher, Teacher Aide, Teacher Assistant, Transporter, Transportation Aide.

Early Head Start: Infant Toddler Home Base Aide, Infant Toddler Family Educator.

Migrant Head Start: Associate Family Advocate, Associate Teacher, Bus Driver, Cook, Cook Aide, ERSEA Specialist, Family Advocate/Family Childcare Specialist, Family Advocate, Groundskeeper, Health and Nutrition Specialist, Secretary, Teacher Assistant, Teacher, Transportation Aide.

Shared: Health & Nutrition Specialist, Education/ Special Needs Specialist, Facilities Specialist, Secretary, Receptionist.

WE WILL NOT unilaterally and without bargaining with the Union:

Change our spring break from 5 to 10 days.
Change our bargaining unit employees' health care plans.

WE WILL NOT refuse to furnish or unreasonably delay in furnishing the Union with relevant and necessary information.

WE WILL NOT In any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed by Section 7 of the Act.

WE WILL recognize and on request, bargain collectively with the Union as the exclusive representative of our employees in the above described unit with respect to wages, hours, and other terms and conditions of employment.

WE WILL at the request of the Union, rescind our extended spring break from 10 to 5 days.

WE WILL at the request of the Union rescind our unilaterally implemented health care plans and reinstate the health plans called for in the 2009–2012 collective-bargaining agreement.

WE WILL make whole all employees affected by our unilateral changes to the length of spring break in 2014 and our employees' health care plans, including payments for additional premiums, costs and deductibles and out of pocket expenses for dependents.

E CENTER
(Employer)

Dated _____ By _____
(Representative) (Title)

Insert QR code before or after these last two paragraphs. Please verify actual placement.
The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

901 Market Street, Suite 400, San Francisco, CA 94103-1735
(415) 356-5130, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/20-CA-124323 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (415) 356-5183.